

Nos. 18-1686, 18-1771

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**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

**AIRGAS USA, LLC  
Petitioner/Cross-Respondent**

**v.**

**NATIONAL LABOR RELATIONS BOARD  
Respondent/Cross-Petitioner**

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**ON PETITION FOR REVIEW AND CROSS-APPLICATION  
FOR ENFORCEMENT OF AN ORDER OF  
THE NATIONAL LABOR RELATIONS BOARD**

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**SUPPLEMENTAL APPENDIX**

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**RUTH E. BURDICK**  
*Supervisory Attorney*

**HEATHER S. BEARD**  
*Attorney*

**National Labor Relations Board  
1015 Half Street, SE  
Washington, DC 20570  
(202) 273-7958  
(202) 273-1788**

**PETER B. ROBB**  
*General Counsel*

**JOHN W. KYLE**  
*Deputy General Counsel*

**LINDA DREEBEN**  
*Deputy Associate General Counsel*

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Joint Ex 5(c)

of such non-compliance without remedy by the Charged Party, the Regional Director will issue a Complaint that includes the allegations covered by the Notice to Employees, as identified above in the Scope of Agreement section, as well as filing and service of the charge(s), commerce facts necessary to establish Board jurisdiction, labor organization status, appropriate bargaining unit (if applicable), and any other allegations the General Counsel would ordinarily plead to establish the unfair labor practices. Thereafter, the General Counsel may file a Motion for Default Judgment with the Board on the allegations of the Complaint. The Charged Party understands and agrees that all of the allegations of the Complaint will be deemed admitted and that it will have waived its right to file an Answer to such Complaint. The only issue that the Charged Party may raise before the Board will be whether it defaulted on the terms of this Settlement Agreement. The General Counsel may seek, and the Board may impose, a full remedy for each unfair labor practice identified in the Notice to Employees. The Board may then, without necessity of trial or any other proceeding, find all allegations of the Complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an Order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board Order ex parte, after service or attempted service upon Charged Party at the last address provided to the General Counsel.

**NOTIFICATION OF COMPLIANCE** — Each party to this Agreement will notify the Regional Director in writing what steps the Charged Party has taken to comply with the Agreement. This notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. If the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that the Charging Party did not request review or that the General Counsel sustained the Regional Director's approval of this agreement. No further action shall be taken in the above captioned case(s) provided that the Charged Party complies with the terms and conditions of this Settlement Agreement and Notice.

Charged Party AIRGAS USA, LLC		Charging Party STEVEN WAYNE ROTTINGHOUSE JR.	
By: Name and Title	Date	By: Name and Title	Date
/s/ Michael C. Murphy Senior Director Labor Relations & Labor Counsel Mr. Michael C. Murphy, Attorney for Airgas USA, LLC	8.27.15	/s/ Steven Wayne Rottinghouse, Jr.  Mr. Steven Wayne Rottinghouse, Jr.	9-1-15
Recommended By:	Date	Approved By:	Date
/s/ Daniel Goode  DANIEL GOODE, Field Attorney	9/3/15	/s/ Garey Edward Lindsay  Garey E. Lindsay, Regional Director, Region 9	Sept. 3, 2015

FORM NLRB-4722  
(6-09)

# NOTICE TO EMPLOYEES



## POSTED PURSUANT TO A SETTLEMENT AGREEMENT APPROVED BY A REGIONAL DIRECTOR OF THE NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

### FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT threaten to change how we enforce our disciplinary procedure because you filed charges with the National Labor Relations Board or because of your participation in the National Labor Relations Board process.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

AIRGAS USA, LLC

(Employer)

Dated: 9/9/15

By: [Signature]

(Representative)

gbs mgr  
(Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov) and the toll-free number (866)687-NLRB (6572).

### THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer,

550 MAIN ST  
RM 3003, CINCINNATI, OH 45202-3271

Telephone: (513)684-3686  
Hours of Operation: 8:30 a.m. to 5 p.m.

Joint Ex 5(d)

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 9**

AIRGAS USA, LLC

and

Case 09-CA-158662

STEVEN WAYNE ROTTINGHOUSE, JR.,  
an Individual

**RESPONDENT'S EXCEPTIONS TO  
THE DECISION OF THE ADMINISTRATIVE LAW JUDGE**

Pursuant to Section 102.46 of the National Labor Relations Board's Rules & Regulations, Respondent Airgas USA, LLC ("Airgas" or the "Employer") respectfully submits the following exceptions to the July 7, 2016 Decision issued by Administrative Law Judge Donna N. Dawson in the above-captioned case ("ALJD").

1. Respondent excepts to the ALJ's finding on p. 2, lines 39-40 and p. 3, line 1 that "[t]he drivers are not responsible for securing the cylinders/tanks inside these cradles" because this finding is contrary to the record evidence. (GC Exh. 6, pp. 3-7).
2. Respondent excepts to the ALJ's finding on p. 3, line 40 that charging party Steven Rottinghouse ("charging party" or "Rottinghouse") "is one of the Respondent's experienced commercial drivers" since the record evidence does not support the characterization of Rottinghouse as "experienced."

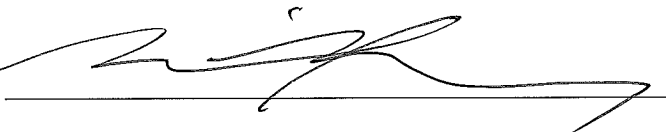
3. Respondent excepts to the ALJ's finding on p. 4, line 5 that "Rottinghouse was an active member of the union" since the record evidence does not support this finding.
4. Respondent excepts to the ALJ's finding on p. 4, fn. 6, that the settlement in Case 09-CA-152301 "included a notice posting that Respondent would not 'threaten to change' its discipline policy due to prior charges or participation on the Board process; it did not contain a nonadmissions clause" because Counsel for the General Counsel never gave Respondent notice that this settlement agreement (as opposed to the original charge itself and/or the alleged conduct underlying the charge) would be raised or relevant to this case and therefore deprived Respondent of the right and ability to provide rebuttal testimony regarding the circumstances of the Employer entering this settlement agreement; furthermore, the Complaint in this case did not allege a violation of this settlement agreement.
5. Respondent excepts to the ALJ's finding on p. 5, lines 24-25 that Froslear "admitted" that the cylinders "did not fall down" because this finding is unsubstantiated by the record evidence and contrary to the record evidence which is devoid of the term "fall down" and does not support an inference that Froslear "admitted" to anything.
6. Respondent excepts to the ALJ's finding on p. 5, lines 30-31 that "Froslear physically examined or even touched the cylinders" as irrelevant since the record evidence establishes that the cylinders moved.
7. Respondent excepts to the ALJ's finding on p. 6, line 7 that the improperly strapped cylinders were leaning "slightly" since this finding is not substantiated by the record evidence and is irrelevant insofar as the ALJ also found that the cylinders moved and were not properly secured.

8. Respondent excepts to the ALJ's findings on p. 5, lines 20-34 since the findings are based on a misreading of the word "fall" as "fall down, insertion of the word "admits" that does not appear in the transcript and on unsupported conclusion that physical inspection of cylinders was relevant.
9. Respondent excepts to the ALJ's findings on p. 10, lines 41-47 and p.11, lines 1-5 as not supported by the record evidence.
10. Respondent excepts to the ALJ's findings on p. 11, lines 30-34 as not supported by the record evidence.
11. Respondent excepts to the ALJ's findings on p. 12, lines 1-19 as not supported by the record evidence.
12. Respondent excepts to the ALJ's findings on p. 13, lines 1-15 and 23-29 as not supported by the record evidence.
13. Respondent excepts to the ALJ's findings on p. 18, lines 1-19 since the ALJ makes no reference to the required showing of a causal connection.
14. Respondent excepts to the ALJ's finding on p. 19, lines 24-43, p. 19, lines 1-47, p. 20, lines 1-47, p. 21, lines 1-40, p. 22, lines 1041, p. 23, lines 1-29 as not supported by the record evidence and applicable case law.



RESPECTFULLY SUBMITTED this 4th day of August, 2016

AIRGAS USA, LLC

By 

Michael C. Murphy  
Airgas, Inc.  
259 N. Radnor-Chester Road  
Radnor, PA 19087  
(610) 230-3077  
michael.murphy@airgas.com

**CERTIFICATE OF SERVICE**

I certify that a copy of Respondent's Post-Hearing Brief was electronically served on all parties in the manner listed below:

Garey E. Lindsay (by E-Filing)  
Regional Director  
National Labor Relations Board, Region 9  
3003 John Weld Peck Federal Building  
550 Main Street  
Cincinnati, Ohio 45202-3271

Erik P. Brinker (by Email)  
Counsel for the General Counsel  
Region 9, National Labor Relations Board  
3003 John Weld Peck Federal Building  
550 Main Street  
Cincinnati, Ohio 45202-3271

Steven Wayne Rottinghouse (by UPS Overnight Mail)  
4221 Harding Avenue  
Cincinnati, OH 45211

DATED this 4th day of August, 2016



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Michael C. Murphy  
Airgas, Inc.  
259 N. Radnor-Chester Road  
Suite 100  
Radnor, PA 19087  
(610) 230-3077  
michael.murphy@airgas.com

### **CERTIFICATION**

Pursuant to 6th Cir. R. 30(b)(4)(E), I certify that all documents included in the Supplemental Appendix are copies of documents that are properly part of the record.

/s/ Linda Dreeben

Linda Dreeben

Deputy Associate General Counsel

National Labor Relations Board

1015 Half Street SE

Washington, DC 20570

Dated at Washington, DC  
this 17th day of October 2018

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

AIRGAS USA, LLC	)	
	)	
Petitioner/Cross-Respondent	)	
	)	Nos. 18-1686
v.	)	18-1771
	)	
	)	
NATIONAL LABOR RELATIONS BOARD	)	
	)	
Respondent/Cross-Petitioner	)	

**CERTIFICATE OF SERVICE**

I hereby certify that on October 17, 2018, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the appellate CM/ECF system. I further certify that the foregoing document was served on all those parties or their counsel of record through the CM/ECF system.

/s/Linda Dreeben  
Linda Dreeben  
Deputy Associate General Counsel  
National Labor Relations Board  
1015 Half Street, SE  
Washington, DC 20570

Dated at Washington, DC  
this 17th day of October, 2018